NO. 80-2035

IN THE

SUPREME COURT OF THE UNITED STATES

****

October Term, 1980

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ELECTRONIC DATA SYSTEMS CORPORATION IRAN,
Petitioner,

v.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES OF AMERICA
Respondents.

REPLY MEMORANDUM
OF PETITIONER AND MOVANT

The positions taken in memoranda filed late yesterday by the Government and Iranian respondents appear aimed at two results --

First, to reduce the practical possibility of a decision by this Court, prior to July 19, as to the validity of the Government's proposed transfer of $4,000,000,000 to Iran.

Second, to evade a determination by this Court on a related and thoroughly intertwined issue: whether executive orders and regulations can oust the federal courts of their jurisdiction, particularly in the EDS case which presents this issue in its starkest form -- and the form most unfavorable to the Government.

Both these issues involve a conflict between novel assertions of executive authority and the exercise of judicial

powers by Article III Courts. This case squarely presents these questions.*

1. The Government argues that certiorari in the EDS case be denied "at least in the absence of a case that also presents the issue of whether the President can lawfully terminate post-blocking order attachments. . . ." (Federal Respondents Memorandum, p. 7). From a letter received last evening, we understand that precisely such a case will be before this Court in a matter of days. (See Exhibit A.) The imminence of this new petition argues not for a precipitous denial of EDS's petition but for consideration of both.

If this Court is to rule on the constitutionality of the executive actions -- a matter of overwhelming public importance, as the Government has heretofore repeatedly urged -- it is essential that it deal with the question whole, not, as both the Government and the Iranians seek, with a limited and isolated aspect. Conceptually, the validity of each proposed action turns on certain central issues. The purported "nullification" of court ordered attachments, whether by funds transfer or by some other frustration of the attachment's purpose, depends on the President's asserted power to nullify court orders and to preempt legislatively conferred jurisdiction -- as does the purported "suspension" of claims.

Whatever special circumstances exist in this case only sharpen the constitutional focus: can the President validly suspend claims pending before U.S. courts, and if so

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* The short answer to the protestation of the defendants that the July 19 transfer of funds should be a matter of no concern to EDS is that, while transfer of the funds attached by EDS are not required by the regulations to be transferred on that date, the regulations are drafted to allow such transfer while insulating from any liability the custodian who so transfers. 31 CFR §§ 535.213(c) and 535.219; Appendix to EDS Petition at A-127 and A-129.

More fundamentally, the Executive Orders and regulations also purport to prohibit EDS from "exercising any right, power or privilege whether by court order or otherwise" with respect to attached funds. E.O. 12279, § 1-102(c); 31 CFR § 535.218(c); Appendix to EDS Petition at A-122 and A-128 (emphasis added). This is as effective a nullification of EDS's attachment as a transfer of the funds -- and is governed by the same legal considerations. See infra.

can he also suspend a judgment like that of EDS? And if he can vitiate a court's jurisdiction over attached funds by transferring them out of the country, can he also preclude a litigant like EDS from exercising its right to satisfy a judgment from attached funds not transferred? Without direct consideration of these questions, meaningful constitutional analysis is frustrated.

2. It is unrealistic in the extreme for the Federal Respondents now to suggest it would "promptly bring a case to this Court" in the event they later encounter an adverse decision. Adequate briefing and resolution of these issues by July 19 would almost require a determination no later than next week of whether to grant review in one or more of these cases. The Government also advises that it "intends, in the next few days, to renew its request" in hundreds of cases to vacate attachments and that it "shortly" will request the Second Circuit to vacate attachments in 96 consolidated cases.* These proceedings could take weeks to culminate in any decision, well beyond the time this Court would require to rule by July 19. There can be no other conclusion than that the Government is now positioning itself to exercise unprecedented powers based on favorable but inconsistent opinions from lower courts, many of which acted on the premise that this Court would have the final constitutional voice on these far-reaching questions. (EDS Petition, at 12-15.)

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* The expressed concern of the Government that denial of certiorari in the EDS case is required to "prevent the Second Circuit and other lower courts from deferring a ruling on the government's request to vacate post-blocking order attachments on the mistaken assumption that this case presents that issue" (Government Memorandum, p. 6) is, EDS submits, baseless. If there were any possibility of such "mistake" by the lower courts, it could readily be met by this Court's assertion in granting certiorari that the lower courts should not for that reason defer ruling on matters before them.

For reasons stated in the petition and herein, it is respectfully submitted that certiorari should be granted.

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 1981, I caused to be served by hand or by express mail a copy of the foregoing Reply Memorandum upon:

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EXHIBIT A

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June 4, 1981

HAND DELIVERED

Mr. Alexander L. Stevas
Clerk of the United States Supreme Court
United States Supreme Court
Washington, D.C. 20543

Re: Electronic Data Systems Corporation Iran v. The Social Security Organization of the Government of Iran, et al.
No. 80-2035

Dear Mr. Stevas:

We are writing on behalf of our client, Dames & Moore, with respect to the Petition for Writ of Certiorari presently pending before the Court in the above-referenced matter.

Dames & Moore is presently a party to three proceedings pending in lower federal courts in California:

1. Dames & Moore v. Atomic Energy Organization of Iran, et al., United States Court of Appeals for the Ninth Circuit No. 81-5237;

2. Dames & Moore v. Atomic Energy Organization of Iran, et al., United States District Court for the Central District of California No. CV 79-04918 LEW (Px); and

3. Dames & Moore v. Donald T. Regan, et al., United States District Court for the Central District of California No. CV 81-2064 LEW (Px).

On June 2, 1981, Orders adverse to Dames & Moore were entered by the District Court in the actions referred to in Items 2 and 3 above; Notices of Appeal from those Orders to the United States Court of Appeals for the Ninth Circuit were

filed in the District Court yesterday; and, we believe, the respective appeals will be docketed in the United States Court of Appeals for the Ninth Circuit today. These two appeals, plus the one already pending in the United States Court of Appeals for the Ninth Circuit (Item 1 above), present, we believe, issues of major constitutional importance closely related to those raised in the Petition now pending in Electronic Data Systems Corporation Iran v. The Social Security Organization of the Government of Iran, et al., No. 80-2035.

As counsel for Dames & Moore, we are currently preparing, as rapidly as possible, a Petition for Writ of Certiorari seeking review by the United States Supreme Court of one or more of the three appeals that are, or soon will be, pending in the United States Court of Appeals for the Ninth Circuit. We will endeavor to file that Petition for Writ of Certiorari by Tuesday, June 9, but in any event no later than 9:00 A.M., Wednesday, June 10, 1981.

We believe that the issues raised in the Electronic Data Systems Petition and the Petition which will be filed by Dames & Moore will present the Court with the full range of constitutional issues presented in hundreds of cases now pending in United States courts which are impacted by the recent Iran-U.S. Agreements and related Executive Orders and Treasury Regulations. For example, the Electronic Data Systems Petition involves a "pre-freeze" attachment and a judgment entered prior to the Iran-U.S. Agreements. The Dames & Moore Petition will involve "post-freeze" attachments, a judgment entered after the recent Iran-U.S. Agreements, and levy proceedings on that judgment.

We respectfully request that the Court hold the Petition presently pending in Electronic Data Systems and consider both that Petition and Dames & Moore's Petition at the same conference.

Very truly yours,

TUTTLE & TAYLOR

C. Stephen Howard/acm

By
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